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THE HONORABLE JOHN C. COUGHENOUR

MAR 07 2003

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY
BY

[Signature] *[Signature]*
BY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DANE CHANCE, NANCY DONALDSON,
ARCHIBALD FILSHILL, MATT JAMPOLE,
JUDY PHAM, SCOTT WERBER, and
CHRISTOPHER BOWLES, Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

AVENUE A, INC.,

Defendant.

No. C00-1964 C

[Signature]
[PROPOSED] FINAL JUDGMENT AND
ORDER OF DISMISSAL

NOTE ON MOTION CALENDAR:
Thursday, March 6, 2003 at 9:00 a.m.



CV 00 01964 #00000077

FINAL JUDGMENT AND ORDER OF
DISMISSAL (C00-1964 C)

Milberg Weiss Bershad Hynes & Lerach LLP
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: 619/231-1058 • Fax: 619/231-7423

CAC, JCC, JM

WHEREAS this matter having come before the Court for approval of the proposed settlement (the "Settlement") in accordance with the parties' Settlement Agreement and Release (the "Settlement Agreement"), which sets forth the terms and conditions for the settlement of this action (the "Federal Action") and the dismissal and release of all claims asserted in two analogous cases against Avenue A, Inc. ("Defendant" or "Avenue A"), entitled: *Garcia v. Avenue A, Inc., et al.*, No. RCV-058277 (Superior Court of California, County of San Bernardino); and *Lopez v. Avenue A, Inc.*, Cause No. 2001-02-752-G (District Court of Cameron County, 103rd Judicial District, State of Texas) (the three cases collectively are referred to herein as the "Actions"); and

WHEREAS the Court having considered the motion for final approval and hearing having been held before the Court on March 6, 2003, pursuant to this Court's Order Granting Preliminary Approval of Class Action Settlement and Approving Form and Manner of Notice entered October 18, 2002 ("Notice and Hearing Order"), the respective parties having appeared by their attorneys of record; the Court having heard and considered evidence in support of the proposed Settlement of this action, the attorneys for the parties having been heard, an opportunity to be heard having been giving to all other persons requesting to be heard in accordance with the Notice and Hearing Order, and no objections having been received, the Court having determined for settlement purposes that this action meets all of the prerequisites of Rule 23 of the Federal Rules of Civil Procedure, including numerosity, commonality, predominance and typicality, and that Plaintiffs are adequate representatives of the class provisionally certified in the Actions (the "Class") pursuant to the Notice and Hearing Order, notice to the Class was due and sufficient notice and complied with all the requirements of due process, the Court having determined that it has jurisdiction over the subject matter of the Federal Action and over all parties to the Actions, including all members of the Class.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Settlement Agreement, and all definitions and terms therein, are hereby incorporated in this Final Judgment and Order of Dismissal.

2. The Court has jurisdiction over the subject matter of the Federal Action, the Class Members, and the Defendant. No Class Members opted out of the Class.

3. With respect to the Class, this Court finds and concludes that: (a) the Members of the Class are so numerous that joinder of all Class Members in the litigation is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual questions; (c) the claims of the representative Plaintiffs are typical of the claims of the Class; (d) the representative Plaintiffs and their counsel have fairly and adequately represented and protected the interests of all the Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of Class Members in individually controlling the prosecution of the separate actions; (ii) the extent and nature of any litigation concerning the controversy already commenced by Class Members; (iii) the desirability or undesirability of continuing the litigation of these claims in this particular forum; and (iv) the difficulties likely to be encountered in the management of the class action.

4. The proposed nationwide class is certified for purposes of settlement only, under Rule 23(b)(3) of the Federal Rules of Civil Procedure, with the Plaintiffs herein serving as the representatives of the Class. The Class consists of:

All Persons in the United States who, through and including October 18, 2002, have had any information about their computers or about them gathered by Avenue A as a result of their Internet activity or who have had one or more Avenue A Cookies placed upon any computer or browser that they own or have utilized. Excluded from the Class are: (1) the District Court judge to whom the Federal Action is assigned and any member of the judge's staff involved in the Federal Action in any manner and the judge's immediate family; (2) any Person who properly submitted a timely request for exclusion from the Class; and (3) Avenue A, any entity in which Avenue A has a controlling interest, and its legal representatives, assigns and successors.

5. The program for notice as set forth in the Settlement Agreement and approved by the Court in the Notice and Hearing Order (the "Notice") has been implemented and provided the best notice practicable under the circumstances to the Class. The Notice satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.

1 6. The Settlement is approved as fair, reasonable, adequate and in the best interest of
2 the Class and shall be consummated in accordance with the terms and conditions of the Settlement
3 Agreement.


4 7. This Court hereby dismisses this action with prejudice and without costs (except as
5 otherwise provided in the Settlement Agreement).

6 8. The Plaintiffs, for themselves and as representatives of the Class, and on behalf of
7 each Class Member and their respective agents, successors, heirs, or assigns, for good and sufficient
8 consideration, the receipt of which is hereby acknowledged, shall be deemed to have, and by
9 operation of this Final Judgment and Order of Dismissal, shall have fully, finally, and forever
10 irrevocably released, relinquished and discharged with prejudice the Released Parties from any and
11 all claims, rights (including rights to reimbursement or restitution), demands, actions, causes of
12 action, suits, matters, issues, debts, liens, damages, attorneys' fees, obligations, contracts, liabilities,
13 agreements, costs, expenses or losses of any nature, whether known or unknown, direct or indirect,
14 matured or unmatured, contingent or absolute, existing or potential, suspected or unsuspected,
15 equitable or legal, and whether under federal statutory law, federal common law or federal
16 regulation, or the statutes, constitutions, regulations ordinances, common law, or any other law of
17 any and all states or subdivisions, parishes or municipalities, which are alleged or which could or
18 might have been alleged in the Actions or in any other action by any Class Member, arising out of
19 or related in any way to the allegations, factual assertions, events, transactions, acts, occurrences,
20 statements, representations, omissions, or any other matter, embraced by, involved or set forth in or
21 otherwise related to the Actions.

22 9. Plaintiffs and all Class Members are permanently barred and enjoined from asserting,
23 commencing, prosecuting or continuing against any of the Released Parties any and all claims, rights
24 (including rights to reimbursement or restitution), demands, actions, causes of action, suits, matters,
25 issues, debts, liens, damages, attorneys' fees, obligations, contracts, liabilities, agreements, costs,
26 expenses or losses of any nature, whether known or unknown, direct or indirect, matured or

1 unmatured, contingent or absolute, existing or potential, suspected or unsuspected, equitable or legal,
 2 and whether under federal statutory law, federal common law or federal regulation, or the statutes,
 3 constitutions, regulations, ordinances, common law, or any other law of any and all states or
 4 subdivisions, parishes or municipalities, which are alleged or which could or might have been
 5 alleged in the Actions or in any other action by any Class Member, arising out of or related in any
 6 way to the allegations, factual assertions, events, transaction, acts, occurrences, statements,
 7 representations, omissions, or any other matter, embraced by, involved or set forth in, or otherwise
 8 related to, the Actions.

9 10. The Settlement Agreement shall be the sole and exclusive remedy for any and all
 10 Released Claims against the Released Parties. Each of the Plaintiffs and the Class Members shall
 11 be deemed to have, and by operation of this Final Judgment and Order of Dismissal shall have,
 12 waived any and all provisions, rights and benefits conferred by Section 1542 of the California Civil
 13 Code or any law of any state or territory of the United States, or principle of common law, which is
 14 similar, comparable or equivalent to Section 1542 of the California Civil Code.

15 11. Each of the Released Parties shall be deemed to have, and by operation of this Final
 16 Judgment and Order of Dismissal shall have fully, finally and forever released, relinquished and
 17 discharged each and all of the Plaintiffs and Class Members and Class Counsel from all claims
 18 arising out of the institution, prosecution, assertion, or resolution of the Actions. 

19 12. Class Counsel are hereby awarded the sum of \$925,000.00, for their reasonable
 20 fees and expenses in prosecuting the Actions, such amounts to be paid to Class Counsel as provided
 21 for in the Settlement Agreement.

22 13. Without affecting the finality of this Final Judgment and Order of Dismissal in any
 23 way, this Court hereby retains exclusive and continuing jurisdiction over: (a) the parties, including
 24 all Class Members; (b) implementation of the Settlement, its interpretation, enforcement, conditions
 25 and obligations; (c) this action until this Final Judgment and Order of Dismissal becomes final and
 26 each and every act agreed to be performed by the parties has been performed pursuant to the

1 Settlement Agreement. Any disputes concerning the same shall be resolved exclusively by this
2 Court.

3 14. Neither this Final Judgment and Order of Dismissal, nor the Settlement Agreement,
4 nor any of its terms or provisions, shall constitute an admission by Avenue A of any liability or
5 wrongdoing whatsoever, nor is this Final Judgment and Order of Dismissal a finding of the validity
6 or invalidity of any claims in the Actions or a finding of any wrongdoing by Avenue A. Neither this
7 Final Judgment and Order of Dismissal nor the Settlement Agreement shall be used or construed as
8 an admission, concession, or presumption or inference of any fault, liability or wrongdoing by any
9 Person. Neither this Final Judgment and Order of Dismissal, the Settlement Agreement, the fact of
10 settlement and the settlement proceedings, nor the settlement negotiations, nor any related document,
11 shall be offered or received in evidence as an admission, concession, or presumption or inference
12 against any party in any proceeding other than (i) in such proceedings as may be necessary to
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1 consummate or enforce the Settlement Agreement; or (ii) in any subsequent action against or by the
2 Released Parties, or any of them, to support a defense of *res judicata*, collateral estoppel, release,
3 or other theory of claim preclusion, issue preclusion, or similar defense.

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5 DATED: March 6, 2003


THE HONORABLE JOHN C. COUGHENOUR
UNITED STATES DISTRICT JUDGE

7 Submitted by:

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26 Plaintiffs' Co-Lead Settlement Counsel

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